IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1206 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANILAL BECHARDAS PATEL

Appearance:

MR MA PATEL, APP for Petitioner

MR KIRIT I PATEL for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 21/06/2001

ORAL JUDGEMENT

1. This appeal has been directed against the judgment and order of acquittal passed by the Learned City Sessions Judge, Ahmedabad in Atrocity Criminal Case No. 1 of 1992. The said case was filed against the

original accused, the present respondents, for the alleged commission of offence under Sections 294, 504, 506 (2) read with sec. 109 of the Indian Penal Code and section 3(1)(xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocity Act').

2. The relevant facts giving rise to the present appeal, shortly stated, are as under :-

There is a house situated in Ambedkarvas, Dariapur in the city of Ahmedabad bearing No. 240/2. One Harishbhai Kodarbhai has been residing in this house as tenant. There are several other tenants also residing in this different parts of this house. The tenants desired to purchase this house from its owner Khushalbhai Chhanabhai. However, Khushalbhai sold the said house to respondent no. 1 some time in November 1991. The prosecution case is that the respondent no. 1 wanted the tenants to hand over vacant possession of this premises. Hence, with an intention to get the premises vacated, the respondents in the leadership of respondent no. 1 on 3/12/1991 went to the tenants at about 9.00 p.m. and respondent no. 1 gave filthy abuses and also threatened the tenants that if they did not vacate the premises, they would be killed. He is also alleged to have stated that 'you Dhedhas have been pampered by the Government and, therefore, you are not listening to any body'. On account of exchange of words, the people residing in surrounding houses also gathered there. The allegation further is that the respondent no. 1 told the tenants that he would engage the mercenaries and become the owner. It is also alleged to have said that he wanted the premises with a view to build a shopping centre and earn lacks of rupees. It is further alleged that respondent no.1 told them that they were at liberty to approach the authority they like to get the help. Thereafter the respondents ran away. The prosecution case is that at 9.00 p.m. or around that time an application was got prepared to be given to the Collector and at about 1.15 in the night between 3rd and 4th December, 1991 the first information report was lodged with Dariapur Police Station. The police, on receipt of the information, commenced investigation and at the end of the same, submitted charge-sheet in the concerned Court.

The case against the respondents came to be numbered as Atrocity Criminal Case No. 1 of 1992 in the City Sessions Court at Ahmedabad. At the trial respondents accused pleaded not guilty. Their defence was

that of general denial.

3. That the learned City Sessions Judge, as stated above, held that the prosecution failed to prove the guilt of respondents - accuses and hence he acquitted them of the offence with which they were charged by giving benefit of doubt. Having been dissatisfied with the judgment and order of acquittal, the State has preferred this appeal.

4. Mr. Patel, Ld. APP has taken me through the entire record of the case including evidence of witnesses examined by the prosecution in support of its case. One Harishbhai Kodarbhai, the informant has been examined as Prosecution Witness No.1. During his examination-in-chief initially he stated that on 12/3/1991 (the date appears to be wrongly typed) the respondent no. 1 came to his house and he threatened him to vacate the premises. He has then stated that after giving such threat Manibhai left the place and thereafter no untoward incident had taken place in respect of the premises in question. At this juncture the Ld. APP appearing in the trial requested the Court to declare the witness hostile. The learned trial Court granted the permission and the Ld. APP was allowed to cross-examine Harishbhai. In the cross-examination of the Ld. APP Harishbhai stated that on 3/12/1991 respondent no. 1 and his two sons Virendra and Arvind came to his residence alongwith Prashant and Madan Jethidas and gave threats to vacate the premises. He has further stated that it was Manibhai i.e. respondent no. 1 who told him to vacate the premises and also insulted him by saying that 'you Dhedhas have been pampered by the Government very much' and he also gave threat that if the witness did not vacate the premises he would be murdered. Harishbhai has, however clarified that no-body had committed any assault on him. According to him at the time of incident people residing in the neighbourhood had gathered there and thereafter the accused left the place. He has further stated that on 3/12/1991 he had lodged FIR with the police. In the cross-examination by the defence this witness admitted that all the tenants of House No. 240/2 wanted to purchase the same from the original owner Khushalbhai and for that they had negotiations with said Khushalbhai. However, respondent no. 1 behind their back and keeping them in dark, purchased the premises from the original owner Khushalbhai. According to this witness, the tenants had right to purchase this house and all the tenants had also sent a notice to respondent no.1 through their advocate on 3/12/1991. This witness has also admitted that on 9/12/1991 they filed a suit being

H.R.P. Civil Suit No. 2401/91 in the Court of Small Causes at Ahmedabad and also made an application for interim injunction. In the cross-examination by defence, he has stated that the application which was meant to be given to the Collector was got typed by the Typist at about 11.00 p.m. On the next day, he had given this application to the Collector and thereafter he had gone to the Dariapur Police Station. According to this witness on 4/12/1991 at about 12.00 noon he had gone to the office of the Collector for submitting the application and thereafter to Dariapur Police Station had about 12.15 afternoon when his complaint was recorded by the police. In the cross-examination by the defence he has also admitted certain facts made in the application submitted to the Collector. The prosecution has produced this application at Exh. 17 on the record of the case.

5. The second witness is Babuben Chhanabhai. According to her she has been staying in the premises in question for the last many years. In respect of the incident she states that on 3/12/1991 at about 9.00 p.m. 4 persons had gone to their house and those 4 persons were respondent no.1, his two sons Prashant and Virendra and one Maganlal Jethidas. According to her, all the 4 had given filthy abuses and called them 'Dhedhas' and had also told them that they should vacate the premises, otherwise their legs would be broken. She has further stated that after saying so all the 4 ran away from the place. In the cross-examination though she has stated that she did not know whether all the tenants have filed civil suit in the Small Causes Court against the respondent no.1, she did admit that she had put her thumb mark on Exh.17. Towards the end of her cross-examination she has denied that before the police she had not given names or description of the accused except respondent no. 1 Manibhai. The prosecution has also examined one Rughnathsinh Motisinh Rathod as P.W. No.3 at Exh.19, who happened to be P.S.I. attached to Investigating squad of Dariapur Police Station. according to him, on 4/12/1991 in the early morning at about 1.15 minutes Harishbhai Kodarbhai gave a complaint in police station which is at Exh.17. He has also admitted in his evidence that there is overwriting in Exh. 17 at 2 places and date 4/12/91 was written with ink. The witness has deposed before the Court that P.W. Babuben had not given names of any other accused except Manibhai and Prashant. He had also admitted in his cross-examination that witness Priykant Chhaganbhai had not stated in his evidence that he sent his son-in-law, that to inform all the tenants that he would pay Rs.15,000/- for vacating the premises.

6. One Priykant Khanabhai has been examined as P.W. No. 4 at Exh. 22 and he has stated in his evidence that on 3/12/1991 at about 9.00 p.m. respondent no. 1 Manibhai and his two sons and servant came to our house and they started raising shouts and they called all the tenants down stairs. He has stated that Manibhai told that the house was purchased by him and they should immediately vacate it as he (Manibhai) wanted to build a shopping centre. He has further stated that Manibhai had sent his son-in-law of Chhanabhai Jinabhai to convey the message that Manibhai would pay Rs.15,000/- to each of the tenants for vacating the premises and if they did not vacate he would see to that. This witness has further stated that on the day of incident Manibhai started giving filthy abuses and he also said that you Dhedhas have become very powerful. According to this witness, after saying this Manibhai and others went away. In the cross-examination he admits that he is the son of prosecution witness Bhagubhai. He has more or less repeated the same story in the cross-examination as done by the earlier witnesses. He has, however, stated in para. 4 of his evidence that he did not remember whether in his statement before the police he has stated that at the time of incident Manibhai is said to have sent son-in-law of Chhanabhai Jinabhai with a message to be given to the tenants that Manibhai would pay Rs.15,000/to each of the tenants for vacating houses. The last Prosecution Witness No. 5 Natvarsinh Jagatsinh Champavat has been examined at Exh. 23, whose evidence is not of much relevance.

7. Having gone through the entire evidence and other documentary evidence on record, I feel that this case is not free from doubt. There is variance between the evidence of the witnesses on certain material aspect and evidence of one witness from the other. So far as evidence of Harishbhai Kodarbhia is concerned, it does not inspire confidence mainly because in the very beginning of his examination-in-chief he was required to be declared hostile by the Learned Addl. Public Prosecutor, as he had not said anything about the incident except to the effect that Manibhai had gone there and had given simple threat to him. However, later on when he was cross-examined by the Ld. APP he has given certain details of the incident. According to him Manibhai alongwith his sons, namely Virendra and Arvind and also with Prashant and Maganbhai Jethibhai had gone there. It is an admitted fact that Manibhai has no son named Arvind. This witness has tried to correct this mistake by saying that he presumed that Arvind was Manibhai's son, because at the time of incident Manibhai

after calling his name asked him to sit down. It appears that even this explanation would not be plausible because no person named Arvind was never present at the time of incident and, therefore, Manibhai would not have called any one by that name. This witness has again stated in his evidence that it was Manibhai who all throughout gave the threats and filthy abuses. The other accused did not speak a word. This part of the evidence differs from the evidence of other witnesses. According to Babuben, P.W. No. 2 at the time of incident Manibhai respondent no. 1, his two sons - Prashant and Virendra and Magan Jethibhai had gone to the premises in question and all of them had given filthy abuses and had called the tenants 'Dhedhas' and had asked them to vacate the premises, otherwise their legs will be broken. Similarly on this aspect the evidence of eye witness Priykant Khanabhai is also not tallying with the evidence of Harishbhai, as this witness only says that Manibhai had spoken some abuses and had said that "

Nothing further has been stated by this witness either in respect of Manibhai or any other accused. Thus, on the aspect of the actual threats given by the accused and the insulting language alleged to have been used by them there is no reliable evidence produced by the prosecution. So far as evidence of Babuben and Priykant is concerned, they do not say that any threat to commit murder of the tenants was given by either Manibhai or any of the accused. So far as P.W. Harish is concerned, in his complaint as well as further statement before the police, he stated that he was even beaten by the respondents accused. However,it is an admitted fact that at no point of time any of the witnesses states about Harish having been beaten by the accused.

Secondly there is also a discrepancy with regard to the timing of the complaint having been lodged with the police. So far as Investigating Officer, who has been examined by the prosecution as Witness No.3, is concerned, he has stated that the information was given to him by Harish at about 1.15 a.m. on the night between 3rd and 4th December, 1991 and he had accordingly recorded the FIR. This fact stands controverted by the evidence of Harish who states during his cross-examination by the defence that he had gone to the Dariapur Police Station after 12.00 noon on 4/12/1991 and thereafter his FIR was recorded by the police. He also states that before going to the police station he had gone to the Collector's office to submit application. Investigating Officer Rughnathsinh states that he had also received said application at the time of lodging of the FIR. It is, therefore, doubtful at what point of

time the FIR was lodged. The police station is very near to the place where the incident took place. If the incident had taken place as alleged by the prosecution, some tenants would have certainly gone to the police station and lodged the complaint before the police at the earliest. But that does not appear to be so.

Thus, taking overall view of the entire evidence, it clearly appears that the prosecution case is not free from doubt. One should not forget that the tenants had been deprived of the opportunity of purchasing this house by respondent no. 1 and obviously therefore they might have been become desperate to get back the premises from him. This can be well inferred from the fact that not only a notice had been given but even a suit has been filed against the present respondent no. 1 for purchase of the house. It is therefore, quite probable that this case might have been cooked up to exert pressure. Since this is an appeal against an acquittal, unless the entire approach of the trial Court in dealing with evidence is patently illegal or conclusions arrived at by it are wholly untenable, this Court should not interfere with the order of acquittal. I do not see any such patent illegality so as to disturb the order of acquittal.

In the result, this appeal deserves to be dismissed and it is hereby ordered to be dismissed. Bail bonds, if any, are ordered to be cancelled.

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* Pansala.